



Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: White Storage & Retrieval Systems, Inc.

File: B-256952

Date: July 20, 1994

William H. Lennox for the protester.
Eileen P. Manley, Esq., Defense Information Systems Agency,
for the agency.
David W. Craig for Spacesaver Systems, Inc., an interested
party.
Peter A. Iannicelli, Esq., and Michael R. Golden, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest that agency improperly decided to set procurement aside for exclusive small business participation is denied where the contracting officer reasonably anticipated that offers would be received from at least two small business concerns based upon several expressions of interest from potential small business offerors during the prior procurement for the same requirement, a market survey conducted by the contracting officer, and two site visits conducted by the agency for the benefit of potential offerors.

DECISION

White Storage & Retrieval Systems, Inc. protests the decision of the Defense Information Systems Agency (DISA) to set aside request for proposals (RFP) No. DCA100-94-R-0040 for exclusive small business competition. The protester contends that the agency's decision to conduct the procurement as a small business set-aside was unreasonable and, in effect, amounted to an improper sole-source award to Spacesaver Systems, Inc.

We deny the protest in part and dismiss it in part.

The protested RFP is a resolicitation of a contract that DISA originally awarded to Spacesaver on October 14, 1993, pursuant to RFP No. DCA100-93-R-2029, which was also a total small business set-aside. Although many small businesses were solicited under the original solicitation, only Spacesaver and White submitted offers. Subsequently, White filed a protest with our Office alleging that the original

award to Spacesaver was improper because the agency had not conducted meaningful discussions and had performed an improper cost/technical tradeoff. Upon investigation of White's protest, the agency reported to our Office that drawings of the user agency's facility had not been furnished to offerors, that the RFP did not accurately reflect the user agency's site and requirements, and that the request for best and final offers did not adequately inform offerors of their proposal deficiencies. As corrective action, DISA terminated Spacesaver's contract for the convenience of the government and resolicited under the current RFP.

The current RFP was issued on February 24, 1994, to fulfill the White House Communications Agency's requirement for design, acquisition, and installation of a mobile carriage storage system. The system is a motorized rack storage system, especially designed for warehouse storage and retrieval, and will provide easier access and expanded storage capacity for the using agency. Although the RFP was issued to 36 prospective offerors, Spacesaver's offer was the only one received by the April 25 closing date for receipt of initial offers. After analyzing cost and technical aspects of Spacesaver's proposal and receiving clarifications from the firm, the agency awarded the contract to Spacesaver on June 8.

White contends that the current procurement should not have been set aside for exclusive small business participation because the agency could not reasonably have anticipated that offers would be obtained from two responsible small businesses as required under Federal Acquisition Regulation (FAR) § 19.502-2(a). White points out that, although the previous procurement for the same requirement was set aside exclusively for small business, only two small business offers (White's and Spacesaver's) were obtained. Because White is now a large business and therefore is ineligible to compete under this small business set-aside, White asserts that Spacesaver was the only small business that DISA reasonably could have expected to submit an offer. White charges that the present procurement amounted to a sole-source award to Spacesaver.

An acquisition must be set aside for exclusive small business participation if the contracting officer determines

¹We dismissed White's protest of the prior award on March 8, 1994.

²White became a large business in December 1993, and, therefore, was not eligible to compete under the small business set-aside procurement.

that there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns and that award will be made at a fair market price. FAR § 19.502-2(a). Generally, our Office regards such a determination as a matter of business judgment within the contracting officer's discretion, which we will not disturb absent a clear showing that it has been abused. Supplemental Resources, Inc.; Favorite Nurses, B-254843.2; B-254843.3, Jan. 31, 1994, 94-1 CPD ¶ 150. An agency must make reasonable efforts to ascertain whether it will receive offers from at least two small businesses with the capabilities to perform the work, and we will review a protest to determine whether the agency has done so. *Id.*

We think the contracting officer's decision to set aside the present procurement for exclusive small business participation was both reasonable and proper. The initial procurement for this requirement was set aside for small business competition by the contracting officer with the concurrence of the agency's small and disadvantaged business utilization specialist and resulted in receipt of two small business offers. In resoliciting the requirement, the contracting agency again set aside the procurement exclusively for small business competition. When, by letter of March 1, White protested the set-aside to the contracting officer, the contracting officer conducted a market survey to ascertain whether two or more small businesses were likely to participate in the repurchase. After discussing the requirement with a large number of small businesses, the contracting officer concluded that two small businesses were very interested and would probably submit proposals, while two other small businesses would consider submitting offers. In addition, three of these firms, and one additional small business, showed their interest in competing for the contract by participating in two site surveys conducted by DISA for the benefit of prospective offerors.

Before deciding whether to maintain the resolicitation as a small business set-aside or to withdraw the set-aside, the contracting officer diligently pursued information related to whether he could reasonably anticipate two or more small business offers. The use of any particular method of

³By letter dated March 28, 1994, after conducting the market survey, the contracting officer decided to maintain the procurement as a set-aside and denied White's agency-level protest.

⁴The contracting officer's notes of his telephone conversations also indicate that several other firms might submit proposals.

assessing the availability of small businesses is not required so long as the contracting officer makes reasonable efforts to locate small business competitors. See E. L. Hamm & Assoc., Inc., B-249642, Dec. 8, 1992, 92-2 CPD ¶ 399. Factors such as prior procurement history, market surveys, and/or advice from the agency's small business specialist may all constitute adequate grounds for a contracting officer to decide whether to set aside a procurement for small business participation. Id. Based upon the several expressions of interest from small business concerns in the original procurement, the market survey, and the site visits, the contracting officer reasonably expected that offers would be received from two or more small business offerors. The fact that only one small business actually submitted an offer does not render unreasonable the contracting officer's decision since the reasonableness of the decision is determined as of the time the decision was made. See Sunrise Int'l Group, Inc.; Specialized Contract Servs., Inc., B-254875; B-254875.2, Jan. 25, 1994, 94-1 CPD ¶ 39.

The protester next asserts that DISA could not have determined that the price offered by Spacesaver was reasonable. However, the record shows that, before awarding the contract, the agency analyzed the various cost elements of Spacesaver's offer and compared Spacesaver's price to the prices proposed by Spacesaver and White in the original procurement to ensure that the contract price was in fact reasonable. White has not shown that the agency's price reasonableness determination was erroneous and, therefore, this argument provides no basis to overturn the award.

White contends that DISA improperly did not ascertain whether the equipment to be provided by Spacesaver would be supplied by small business concerns. However, Spacesaver certified in its proposal that it was a small business concern and that all end items to be furnished would be manufactured or produced by small businesses. Thus, this argument provides no basis to sustain the protest.

The protester also alleges that the RFP was unduly restrictive because several different specifications favored Spacesaver. However, as the agency properly set the procurement aside for exclusive small business

⁵To the extent that White is protesting that Spacesaver cannot supply products manufactured by small business concerns, the matter is properly for resolution by the Small Business Administration and not our Office. 4 C.F.R. § 21.3(m)(3) (1994).

participation, White is not an interested party to protest allegedly restrictive specifications, since White is a large business and would not be eligible to compete for the contract even if we agreed with its position. See TSM Corp., B-252362.2, July 12, 1993, 93-2 CPD ¶ 13.

The protest is denied in part and dismissed in part.

/s/ James A. Spangerberg
for Robert P. Murphy
Acting General Counsel